

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

GEMINI INSURANCE COMPANY, a
Delaware corporation,

Plaintiff,

v.

NATIONAL SPECIALTY INSURANCE
COMPANY, a Texas Corporation, TRUCKS
ON THE RUN, INC., a New Jersey
corporation, TMD LOGISTICS CORP., a
New Jersey corporation, KVC LOGISTICS
CORP., a New Jersey Corporation, JWB
LOGISTICS CORP., a New Jersey
Corporation, CMD LOGISTICS, INC. a
New Jersey Corporation, THOMAS W.
PUNKO, a Pennsylvania resident, and
DEBORAH PREBOLA, as Plenary
Temporary Guardian of Jesse L. Prebola,
Her Son, and an Incapacitated Adult, a
Pennsylvania resident,

Defendants.

CASE NO.:

CIVIL ACTION

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

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Plaintiff, Gemini Insurance Company (“Gemini”), by way of Complaint against Defendants, National Specialty Insurance Company (“National Specialty”), Trucks on the Run, Inc. (“Trucks on the Run”), TMD Logistics Corp. (“TMD”), KVC Logistics Corp. (“KVC”), JWB Logistics Corp. (“JWB”), CMD Logistics, Inc. (“CMD Logistics”), Thomas W. Punko, and Deborah Prebola, as plenary temporary guardian of Jessie L. Prebola, her son and an incapacitated adult, allege and say as follows:

THE PARTIES AND JURISDICTION

1. Gemini is a Delaware corporation engaged in the insurance business with a principal place of business located at 475 Steamboat Road, Greenwich, Connecticut.

2. National Specialty is a Texas corporation engaged in the insurance business with a principal place of business located in Bedford, Texas.

3. Trucks on the Run is a New Jersey corporation with a principal place of business located at 219 Cambridge Road, Montville, New Jersey.

4. TMD is a New Jersey corporation with a principal place of business located at 350 Main Road, Montville, New Jersey 07045.

5. KVC is a New Jersey corporation with a principal place of business located at 350 Main Road, Montville, New Jersey 07045.

6. JWB is a New Jersey corporation with a principal place of business located at 350 Main Road, Montville, New Jersey 07045.

7. CMD is a New Jersey corporation with a principal place of business located at 350 Main Road, Montville, New Jersey 07045.

8. Thomas W. Punko is an individual residing at 19 Flat Road, Plymouth, PA 18651.

9. Deborah Prebola, as plenary temporary guardian of Jesse L. Prebola, her son, an incapacitated adult, is an individual residing at 90 Rear Ridge Street, Shavertown, PA 18708.

10. Trucks on the Run, TMD, KVC, JWB, CMD, Mr. Punko and Ms. Prebola are named as interested parties.

11. The amount in controversy exceeds the sum of Seventy-Five Thousand (\$75,000), not including interest and costs.

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

13. Venue is proper pursuant to 28 U.S.C. §§ 1391 (a) and (c).

NATURE OF THE ACTION

14. This action is brought pursuant to the Federal Declaratory Judgment Act seeking a declaration as to the rights and responsibilities, if any, owed by Gemini and Defendant, National

Specialty, to Defendants, Trucks on the Run, JWB, TMD, CMD, KVC and Punko for possible liability arising out of an October 27, 2010, automobile accident involving Jesse L. Prebola (the “Accident”).

15. At the time of the Accident at issue Punko was driving a tractor owned by non-party River Street Idealease LLC and leased by Trucks on the Run, and was hauling a trailer owned by non-party Commercial Trailer Leasing, Inc., leased by non-party Paul’s Truck Leasing Corp., and subleased by TMD.

16. At the time of the Accident at issue Punko was employed by JWB.

THE INSURANCE POLICIES

17. National Specialty issued an insurance policy to KVC, CMD and TMD under policy number TFM 300005-02, for the period of February 1, 2010, to February 1, 2011, with a per accident limit of \$1,000,000 (the “KVC/TMD/CMD Primary Policy”).

18. National Specialty issued an insurance policy to Trucks on the Run under policy no. TFM00007-02, for the period of February 1, 2010, to February 1, 2011, with a per accident limit of \$1,000,000 (the “Trucks on the Run Primary Policy”).

19. National Specialty issued an insurance policy to JWB under policy no. TFM00006-02, for the period of February 1, 2010, to February 1, 2011, with a per accident limit of \$1,000,000 (the “JWB Primary Policy”).

20. Gemini issued an umbrella policy to KVC under policy number GVE 10081401, for the policy period of May 29, 2010, to May 29, 2011, with a per occurrence limit of \$4,000,000 (the “KVC/TMD/CMD Umbrella Policy”).

21. TMD and CMD also are listed as named insureds under the KVC/TMD/CMD Umbrella Policy.

22. Gemini issued an umbrella policy to Trucks on the Run under policy number GVE 10081201, for the policy period of May 29, 2010, to May 29, 2011, with a per occurrence limit of \$1,000,000 (the “Trucks on the Run Umbrella Policy”).

23. Gemini issued an umbrella policy to JWB under policy no. GVE100081501, effective May 29, 2010, to May 29, 2011, with a \$1,000,000 per occurrence limit (the “JWB Umbrella Policy”).

24. The Gemini umbrella policies obligate Gemini to pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of, among other things, “bodily injury” to which the insurance applies.

25. The Gemini umbrella policies define “ultimate net loss” in relevant part as: “the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay by reason of a judgement [sic] against the insured after actual trial, an alternative dispute resolution and or by written agreement of the insured, the claimant or the claimant’s legal representative and us”.

26. The Gemini umbrella policies define “retained limit” as:

the greater of:

a. The sum of amounts applicable to any claim or “suit” from:

- (1)** “Underlying insurance”, whether such “underlying insurance” is collectible or not; and
- (2)** From other insurance; whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this policy’s Limits of Insurance; and
- (3)** Any uninsured retention, under the “underlying insurance”; or

b. The “self-insured retention”.

27. The Gemini umbrella policies define “underlying insurance” as “the coverage(s) afforded under insurance policies, for the limits shown, as designated in the schedule of ‘underlying insurance’ and any renewals or replacements of those policies.”

28. The Gemini umbrella policies identify primary Commercial Auto Liability policies issued by National Specialty in their respective Schedules of Underlying Insurance.

29. The Gemini umbrella policies define “self-insured retention” as “the amount so identified in the Declarations.

30. The Gemini umbrella policies’ Declarations identify the self-insured retention as “\$10,000 each ‘occurrence’ or offense not covered by ‘underlying insurance’”.

THE UNDERLYING ACTION

31. On or about January 11, 2012, Defendant Deborah Prebola, as plenary temporary guardian of Jesse L. Prebola, the individual involved in the Accident, instituted an action in the Pennsylvania Court of Common Pleas of Luzerne County against, among others, Punko, Trucks on the Run, TMD a/k/a CMD, CMD, KVC, and JWB (the “Underlying Action”).

32. On information and belief, a Complaint has not yet been served in the Underlying Action.

COUNT ONE

33. Gemini repeats and realleges the allegations set forth in the preceding paragraphs of the Complaint as if set forth at length herein.

34. Punko, Trucks on the Run, TMD, KVC, CMD and/or JWB are insureds under one or more of the policies issued by National Specialty.

35. National Specialty has, however, disputed whether and/or to what extent its policies provide coverage to Punko, Trucks on the Run, TMD, KVC, CMD and/or JWB, and

raised questions as to whether and/or to what extent the Gemini umbrella policies provide coverage to those persons or entities.

36. The Gemini umbrella policies are excess to the policies issued by National Specialty and, as such, cannot be reached until, among other things, the National Specialty policies have been exhausted.

37. Given the uncertainty concerning whether or to what extent the National Specialty policies provide coverage for the Underlying Action, Gemini is unable to determine whether or to what extent its policies apply to the Underlying Action.

38. A justiciable controversy therefore exists between Gemini and National Specialty as to whether, and/or to what extent, the National Specialty and Gemini policies provide coverage to Punko, Trucks on the Run, TMD, KVC, CMD and/or JWB.

39. Gemini therefore is entitled to a declaration as to National Specialty's and Gemini's rights and obligations under the National Specialty and Gemini policies with respect to the claims asserted against, and to be asserted against, Punko, Trucks on the Run, TMD, KVC, CMD and JWB in the Underlying Action.

WHEREFORE, Gemini requests judgment in its favor as follows:

1. Declaring whether and to what extent the claims asserted or to be asserted in the Underlying Action are covered, or potentially covered, under the National Specialty policies and the Gemini umbrella policies; and
2. Such other and further relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs designate Justin N. Kinney, Esq. as trial counsel.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

COUGHLIN DUFFY LLP

/s/ Justin N. Kinney
Justin N. Kinney

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Attorneys for Plaintiff, Gemini Insurance Company

Dated: April 26, 2012

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

Pursuant to Local Rule 11.2, the undersigned member of the bar of this Court hereby certifies that the matter in controversy is not the subject of any other action pending in any other court or of any pending arbitration or administrative proceeding, and none is contemplated.

COUGHLIN DUFFY LLP

/s/ Justin N. Kinney
Justin N. Kinney

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Attorneys for Plaintiff, Gemini Insurance Company

Dated: April 26, 2012